

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 97

[FRL-9956-22-OAR]

**Allocations of Cross-State Air Pollution Rule Allowances from
New Unit Set-Asides for 2016 Control Periods**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability (NODA).

SUMMARY: The Environmental Protection Agency (EPA) is providing notice of the availability of preliminary lists of units eligible for allocations of emission allowances under the Cross-State Air Pollution Rule (CSAPR). Under the CSAPR federal implementation plans (FIPs), portions of each covered state's annual emissions budgets for each of the CSAPR emissions trading programs are reserved for allocation to electricity generating units that commenced commercial operation on or after a certain date (new units) and certain other units not otherwise obtaining allowance allocations under the FIPs. The quantities of allowances allocated to eligible units from each new unit set-aside (NUSA) under the FIPs are calculated in an annual one- or two-round allocation process. EPA previously completed the first round of NUSA allowance allocations for the 2016 control periods

for all the CSAPR trading programs, as well as the second round of allocations for the CSAPR NO_x Ozone Season Trading Program, and is now making available preliminary lists of units eligible for allocations in the second round of the NUSA allocation process for the CSAPR NO_x Annual, SO₂ Group 1, and SO₂ Group 2 Trading Programs. EPA has posted spreadsheets containing the preliminary lists on EPA's website. EPA will consider timely objections to the lists of eligible units contained in the spreadsheets and will promulgate a document responding to any such objections no later than February 15, 2017, the deadline for recording the second-round allocations of CSAPR NO_x Annual, SO₂ Group 1, and SO₂ Group 2 allowances in sources' compliance accounts. This document may concern CSAPR-affected units in the following states: Alabama, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia, and Wisconsin.

DATES: Objections to the information referenced in this document must be received on or before [insert date 30 days after date of publication Federal Register].

ADDRESSES: Submit your objections via email to CSAPR_NUSA@epa.gov. Include "2016 NUSA allocations" in the email

subject line and include your name, title, affiliation, address, phone number, and email address in the body of the email.

FOR FURTHER INFORMATION CONTACT: Questions concerning this action should be addressed to Robert Miller at (202) 343-9077 or miller.robertL@epa.gov or Kenon Smith at (202) 343-9164 or smith.kenon@epa.gov.

SUPPLEMENTARY INFORMATION: Under the CSAPR FIPs, the mechanisms by which initial allocations of emission allowances are determined differ for "existing" and "new" units. For "existing" units - that is, units commencing commercial operation before January 1, 2010 for purposes of the original four¹ CSAPR trading programs - the specific amounts of CSAPR FIP allowance allocations for all control periods have been established through rulemaking. EPA has announced the availability of

¹In the recently finalized Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS (CSAPR Update Rule), 81 FR 74504 (October 26, 2016), EPA is establishing new or modified FIP requirements for EGUs in 22 states to address transported pollution with regard to the 2008 ozone NAAQS, including requirements to participate in a new fifth CSAPR trading program - the CSAPR NO_x Ozone Season Group 2 Trading Program - for emissions occurring in 2017 and later years. In the same rule, EPA is also withdrawing the FIP provisions requiring EGUs in 24 states to participate in the existing trading program addressing transported pollution with regard to the 1997 ozone NAAQS for emissions occurring after 2016. (When the CSAPR Update rule takes effect in December 2016, the existing ozone season program will be renamed the CSAPR NO_x Ozone Season Group 1 Trading Program.) The 2016 allowance allocations described in this document concern the CSAPR annual trading programs and are not affected by the CSAPR Update Rule.

spreadsheets showing the CSAPR FIP allowance allocations to existing units in previous document.²

“New” units - that is, units commencing commercial operation on or after January 1, 2010 for purposes of the original four CSAPR trading programs - as well as certain older units that would not otherwise obtain FIP allowance allocations do not have pre-established allowance allocations. Instead, the CSAPR FIPs reserve a portion of each state’s total annual emissions budget for each CSAPR emissions trading program as a new unit set-aside (NUSA)³ and establish an annual process for allocating NUSA allowances to eligible units. States with Indian country within their borders have separate Indian country NUSAs. The annual process for allocating allowances from the NUSAs and Indian country NUSAs to eligible units is set forth in the CSAPR regulations at 40 CFR 97.411(b) and 97.412 (NO_x Annual Trading

² The latest spreadsheet of CSAPR FIP allowance allocations to existing units covered by CSAPR NO_x Annual, SO₂ Group 1, and SO₂ Group 2 Trading Programs, updated in 2014 to reflect changes to CSAPR’s implementation schedule but with allocation amounts unchanged since June 2012, is available at <https://www.epa.gov/csapr/date-change-affirmation-rules-cross-state-air-pollution-rule-csapr> under the “Notice of Data Availability” header. See Availability of Data on Allocations of Cross-State Air Pollution Rule Allowances to Existing Electricity Generating Units, 79 FR 71674 (December 3, 2014).

³ The NUSA amounts range from two percent to eight percent of the respective state budgets. The variation in percentages reflects differences among states in the quantities of emission allowances projected to be required by known new units at the time the budgets were set or amended.

Program), 97.511(b) and 97.512 (NO_x Ozone Season Trading Program), 97.611(b) and 97.612 (SO₂ Group 1 Trading Program), and 97.711(b) and 97.712 (SO₂ Group 2 Trading Program). Each NUSA allowance allocation process involves up to two rounds of allocations to new units followed by the allocation to existing units of any allowances not allocated to new units. EPA provides public notice at certain points in the process.

EPA has already completed the first round of allocations of 2016 NUSA allowances for all the CSAPR trading programs, as well as the second round of 2016 NUSA allocations to units subject to the CSAPR Ozone Season Trading Program, as announced in documents previously published in the *Federal Register*.⁴ The first and second-round NUSA allocation process was discussed in those previous documents. This document concerns the second round of NUSA allowance allocations for the CSAPR NO_x Annual, SO₂ Group 1, and SO₂ Group 2 Trading Programs for the 2016 control period.⁵

The units eligible to receive second-round NUSA allocations for the CSAPR NO_x Annual, SO₂ Group 1, and SO₂ Group 2 Trading Programs are defined in §§ 97.411(b)(1)(iii) and

⁴ 81 FR 33636 (May 27, 2016); 81 FR 50630 (August 2, 2016); 81 FR 63156 (September 14, 2016); 81 FR 80593 (November 16, 2016).

⁵ At this time, EPA is not aware of any unit eligible for a second-round allocation from any Indian country NUSA.

97.412(a)(9)(i), 97.611(b)(1)(iii) and 97.612(a)(9)(i), and 97.711(b)(1)(iii) and 97.712(a)(9)(i), respectively. Generally, eligible units include any CSAPR-affected unit that commenced commercial operation between January 1 of the year before the control period in question and November 30 of the year of the control period in question. In the case of the 2016 control period, an eligible unit therefore must have commenced commercial operation between January 1, 2015 and November 30, 2016 (inclusive).

The total quantity of allowances to be allocated through the 2016 NUSA allowance allocation process for each state and emissions trading program - in the two rounds of the allocation process combined - is generally the state's 2016 emissions budget less the sum of (1) the total of the 2016 CSAPR FIP allowance allocations to existing units and (2) the amount of the 2016 Indian country NUSA, if any.⁶ The amounts of CSAPR NO_x Annual, SO₂ Group 1, and SO₂ Group 2 NUSA allowances may be increased in certain circumstances as set forth in §§ 97.412(a)(2), 97.612(a)(2), and 97.712(a)(2), respectively.

⁶ The quantities of allowances to be allocated through the NUSA allowance allocation process may differ slightly from the NUSA amounts set forth in §§ 97.410(a), 97.510(a), 97.610(a), and 97.710(a) because of rounding in the spreadsheet of CSAPR FIP allowance allocations to existing units.

Second-round NUSA allocations for a given state, trading program, and control period are made only if the NUSA contains allowances after completion of the first-round allocations.

The amounts of second-round allocations of CSAPR NO_x Annual, SO₂ Group 1, and SO₂ Group 2 allowances to eligible new units from each NUSA are calculated according to the procedures set forth in §§ 97.412(a)(9), (10) and (12), 97.612(a)(9), (10), and (12), and 97.712(a)(9), (10), and (12), respectively. Generally, the procedures call for each eligible unit to receive a second-round 2016 NUSA allocation equal to the positive difference, if any, between its emissions during the 2016 annual control periods (i.e., January 1, 2016 through December 31, 2016) as reported under 40 CFR part 75 and any first-round allocation the unit received, unless the total of such allocations to all eligible units would exceed the amount of allowances in the NUSA, in which case the allocations are reduced on a pro-rata basis.

Any allowances remaining in the CSAPR NO_x Annual, SO₂ Group 1, or SO₂ Group 2 NUSA for a given state and control period after the second round of NUSA allocations to new units will be allocated to the existing units in the state according to the procedures set forth in §§ 97.412(a)(10) and (12), 97.612(a)(10) and (12), and 97.712(a)(10) and (12), respectively.

EPA notes that an allocation or lack of allocation of allowances to a given EGU does not constitute a determination that CSAPR does or does not apply to the EGU. EPA also notes that allocations are subject to potential correction if a unit to which NUSA allowances have been allocated for a given control period is not actually an affected unit as of the start of that control period.⁷

The preliminary lists of units eligible for second-round 2016 NUSA allowance allocations for the three CSAPR annual trading programs are set forth in Excel spreadsheets titled "CSAPR_NUSA_2016_NOx_Annual_2nd_Round_Prelim_Data," "CSAPR_NUSA_2016_SO₂_Group_1_2nd_Round_Prelim_Data," and "CSAPR_NUSA_2016_SO₂_Group_2_2nd_Round_Prelim_Data" available on EPA's website at <https://www.epa.gov/csapr/csapr-compliance-year-2016-nusa-nodas>. Each spreadsheet contains a separate worksheet for each state covered by that program showing each unit preliminarily identified as eligible for a second-round NUSA allocation.

Each state worksheet also contains a summary showing (1) the quantity of allowances initially available in that state's 2016 NUSA, (2) the sum of the 2016 NUSA allowance allocations that were made in the first-round to new units in that state (if

⁷ See 40 CFR 97.411(c), 97.611(c), and 97.711(c).

any), and (3) the quantity of allowances in the 2016 NUSA available for distribution in second-round allocations to new units (or ultimately for allocation to existing units).

Objections should be strictly limited to whether EPA has correctly identified the new units eligible for second-round 2016 NUSA allocations of CSAPR NO_x Annual, SO₂ Group 1, and SO₂ Group 2 allowances according to the criteria described above and should be emailed to the address identified in **ADDRESSES**.

Objections must include: (1) precise identification of the specific data the commenter believes are inaccurate, (2) new proposed data upon which the commenter believes EPA should rely instead, and (3) the reasons why EPA should rely on the commenter's proposed data and not the data referenced in this document.

(Authority: 40 CFR 97.411(b), 97.611(b), and 97.711(b).)

Dated: December 1, 2016. Reid P. Harvey,
Director, Clean Air Markets Division,
Office of Atmospheric Programs,
Office of Air and Radiation.

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